

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 14,721

IN THE MATTER OF:

Served April 23, 2014

HOME LIFE HELP SERVICES, LLC, WMATC)
No. 1607, Investigation of)
Violation of WMATC Regulation)
Nos. 58 & 60-64)

Case No. MP-2013-084

This matter is before the Commission on respondent's response to Order No. 14,472, served January 8, 2014, which directed respondent to show cause why the Commission should not assess a civil forfeiture for respondent's knowing and willful violations of Regulation Nos. 62, 64-02(g) & 64-02(h). The response addresses Regulation No. 62 but not Regulation Nos. 64-02(g) and 64-02(h).

I. RESPONSE AND FINDINGS

A. Wells Fargo Van

Under WMATC Regulation No. 62-02, before operating a vehicle titled in another person's name, a WMATC carrier must first file a lease with the Commission and receive Commission approval.

The record shows that respondent filed a van lease with the Commission in January of this year consisting of an original lease between respondent and A-Z Resources, LLC, and an assignment of that lease to Wells Fargo Equipment Finance, (Wells Fargo). An examination of the lease reveals that it became effective January 29, 2010, and was assigned to Wells Fargo on February 10, 2010. Respondent claims that the lease was paid off shortly after the assignment to Wells Fargo. There is nothing in the record to substantiate this claim. On the contrary, the record shows Wells Fargo asserting ownership and security interests in the vehicle in question as late as September 10, 2012.

In any event, documents furnished by respondent for this vehicle show that a Maryland Certificate of Title was issued in the name of Wells Fargo on March 4, 2010, and that a Maryland Certificate of Title was issued in respondent's name on September 24, 2013. The vehicle in question appears on respondent's WMATC annual report for each year beginning with the report for 2012. Therefore, for purposes of Regulation No. 62-02, we find that said lease should have been on file with the Commission from January 2010 to September 2013. Although respondent submitted copies of said lease in July of last year, no filing fee was paid until January of this year.

We therefore find that from January 2010 to September 2013, respondent violated Regulation No. 62-02 by operating under WMATC

authority a van not titled in respondent's name and not covered by a Commission-approved lease.

B. Driving Records

Respondent operates vehicles that seat fewer than nine persons, including the driver. Effective August 15, 2012, Regulation No. 64-02 applies to the carriers operating such vehicles. Regulation No. 64-02(g) stipulates that:

A carrier shall not employ a person as a driver without first obtaining a certified copy of the person's complete driving record maintained by each state from which the person held a motor vehicle operator's license or permit during the preceding ten years. Every twelve months thereafter a carrier shall obtain a certified copy of the person's driving record maintained by each state from which the person held a motor vehicle operator's license or permit during those twelve months.

Order No. 14,027, served June 20, 2013, directed respondent to produce "any and all . . . driver records, including but not limited to . . . state motor vehicle driving records." Respondent produced some driving records on July 2, 2013, but none covered a 10-year period. As of September 24, 2013, respondent had produced the following certified driving records:

Employee D.K. - 10-year record dated October 1, 2009.

Employee D.V. - 10-year record dated June 23, 2012.

Employee L.G. - 3-year record dated February 5, 2013.

On October 3, 2013, respondent produced additional certified driving records for these three drivers but none are dated prior to September 27, 2013, thus yielding a four-year driving-record gap for employee D.K. and a 15-month driving record gap for employee D.V.

We therefore find that respondent violated Regulation No. 64-02(g) by failing to obtain updated driving records every 12 months for employees D.K. and D.V.¹

C. Criminal History Records

Regulation No. 64-02(h) stipulates that:

A carrier shall not employ a person as a driver without first obtaining a certified copy of the person's complete criminal history record maintained by each state in which the person resided during the preceding ten years. Every twelve months thereafter a carrier shall

¹ We note that respondent's files are now up to date with respect to the driving records for respondent's three drivers.

obtain a certified copy of the person's criminal history record maintained by each state in which the person resided during those twelve months.

As noted above, Order No. 14,027, served June 20, 2013, directed respondent to produce "any and all . . . driver records." Respondent produced certified 10-year criminal history records for the aforementioned three drivers on August 30, 2013. The criminal history records for employees D.K. and L.G. are dated August 6, 2013, and the criminal history record for employee D.V. is dated August 16, 2013.

The record shows that these persons were employed as drivers by respondent prior to August 2013, but respondent has produced no criminal history records dated prior thereto as evidence of respondent having obtained criminal history records before employing these persons as drivers.

We therefore find that respondent violated Regulation No. 64-02(h) by failing to obtain criminal history records for respondent's three drivers before employing them in that capacity.²

II. ASSESSMENT OF FORFEITURE

A person who knowingly and willfully violates a provision of the Compact, or a rule, regulation, requirement, or order issued under it, or a term or condition of a certificate shall be subject to a civil forfeiture of not more than \$1,000 for the first violation and not more than \$5,000 for any subsequent violation.³

The term "knowingly" means with perception of the underlying facts, not that such facts establish a violation.⁴ The term "willfully" does not mean with evil purpose or criminal intent; rather, it describes conduct marked by careless disregard whether or not one has the right so to act.⁵ Employee negligence is no defense.⁶ "To hold carriers not liable for penalties where the violations . . . are due to mere indifference, inadvertence, or negligence of employees would defeat the purpose of" the statute.⁷

On this record, we find that the violations committed by respondent were knowing and willful.

² We note that respondent's files are now up to date with respect to the criminal history records for respondent's three drivers.

³ Compact, tit. II, art. XIII, § 6(f).

⁴ *In re Washington Shuttle, Inc., t/a SuperShuttle*, No. MP-11-099, Order No. 14,114 at 4 (July 31, 2013).

⁵ *Id.* at 4.

⁶ *In re L & J Limo Servs. LLC*, No. MP-10-017, Order No. 12,658 at 3 (Dec. 17, 2010); *In re Sams Health Care Servs. Inc.*, No. MP-08-005, Order No. 11,947 (Apr. 23, 2009).

⁷ *United States v. Illinois Cent. R.R.*, 303 U.S. 239, 243, 58 S. Ct. 533, 535 (1938).

We will assess a forfeiture of \$250 for the lease violation⁸ and a forfeiture of \$500 for each of the two safety violations,⁹ for a total forfeiture of \$1,250.

THEREFORE, IT IS ORDERED:

1. That pursuant to Article XIII, Section 6(f), of the Compact, the Commission hereby assesses a civil forfeiture against respondent in the amount of \$1,250 for knowingly and willfully violating WMATC Regulation Nos. 62-02, 64-02(g), and 64-02(h).

2. That respondent is hereby directed to pay to the Commission within 30 days of the date of this order, by check or money order, the sum of one thousand two hundred fifty dollars (\$1,250).

BY DIRECTION OF THE COMMISSION; COMMISSIONERS BRENNER, HOLCOMB, AND BELLAMY:

A handwritten signature in black ink, appearing to read 'W. S. Morrow, Jr.', is positioned above the printed name.

William S. Morrow, Jr.
Executive Director

⁸ See *In re Exec Tech. Solutions, LLC, v. Vicar Limo Serv., Inc.*, No. FC-07-03, Order No. 11,680 (Nov. 12, 2008) (same).

⁹ See Order No. 14,114 at 6 (first offenders assessed \$500 per safety violation).